

NICHOLAS A. TRUTANICH  
Nevada Bar Number 13644  
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SEAN BEATY  
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150 M St., NE, Rm. 1.811  
Washington, DC 20002  
(202) 616-2717

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTON PAUL DRAGO,

Defendant.

2:13-cr-00334-JCM-CWH

Government's Motion for Clarification  
of the Court's March 6, 2020 Order  
Deeming the Attorney-Client Privilege  
Waived

The United States of America, by and through NICHOLAS A. TRUTANICH, United States Attorney, and SEAN BEATY, Trial Attorney, Department of Justice, Tax Division, respectfully requests that this Court clarify its March 6, 2020 Order deeming the Defendant Paul Anton Drago's attorney-client privilege in the above-captioned case waived with respect to attorney Rebecca Levy.

This order is sought for the following reasons:

1. Defendant Anton Paul Drago moved the Court pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody in the above-captioned case. Dkt. No. 211. The Court ordered the government to respond to Drago's motion, and that response was due March 18, 2020. Dkt. No. 212. However, the Court

1 granted the government's motion to stay the briefing schedule (Dkt. No. 213) on March 6,  
2 2020. Dkt. No. 214.

3 2. In his motion, Drago conceded his guilt for the crimes of which he was  
4 convicted (*see* Dkt. No. 211, p. 14, ¶¶ 6-7), but asserted that his trial attorney provided  
5 ineffective assistance of counsel by failing to negotiate a plea offer that would have  
6 reduced his overall sentence.

7 3. In preparation for the government's response to Drago's motion, counsel for  
8 the United States identified correspondence from June 2015 between Drago's then-  
9 attorney, Assistant Federal Public Defender Rebecca Levy, and counsel for the United  
10 States. That correspondence shows that the government made a pretrial plea offer to Mr.  
11 Drago on June 6, 2015, and that the parties negotiated a potential resolution for several  
12 weeks.

13 4. The parties ultimately did not reach an agreement, and instead continued  
14 their respective preparations for trial. Several months after the plea negotiations broke  
15 down, Drago hired attorney Kevin O'Connell to represent him at trial, and Ms. Levy  
16 withdrew from the case.

17 5. Inasmuch as Drago now claims in his § 2255 motion that he was, in fact,  
18 guilty and would have pleaded guilty if only his attorney had explored the possibility of a  
19 plea with him, Drago's discussions with Ms. Levy about the government's June 2015 plea  
20 offer are directly relevant to those claims. Specifically, the United States must be permitted  
21 to explore with Ms. Levy (i) whether she communicated the government's plea offer to  
22 Drago, (ii) whether she explained to Drago the benefits associated with accepting the  
23 government's offer or the associated risks of rejecting the plea offer, (iii) whether she

1 recommended, formally or informally, that Drago accept or reject the government's plea  
2 offer, (iv) whether Drago ever admitted his guilt to Ms. Levy or communicated any  
3 interest in pleading guilty to one or more of the crimes charged, either by way of a plea  
4 agreement or an open plea to the indictment, (v) whether Drago instructed Ms. Levy to  
5 reject the government's plea offer, or whether he simply never communicated his decision  
6 on the plea offer, (vi) whether Ms. Levy perceived that Drago had implicitly rejected the  
7 government's plea offer by failing to communicate his desire to accept the offer, and (vii)  
8 whether Ms. Levy's continued efforts to prepare for trial after the plea negotiations ended  
9 were, themselves, further indicia that Drago did not intend to plead guilty.

10         6.       On March 5, 2020, the United States moved the Court for an Order  
11 deeming Drago's attorney-client communications privilege to be deemed waived with  
12 respect to Ms. Levy and Mr. O'Connell concerning all contentions raised in Drago's  
13 § 2255 motion. Dkt. No. 213. The Court granted the United States' motion on March 6,  
14 2020, and ordered Ms. Levy and Mr. O'Connell to provide the government with an  
15 affidavit or declaration concerning all information known by them related to the  
16 contentions raised in Drago's § 2255 motion. Dkt. No. 215.

17         7.       On March 18, 2020, Ms. Levy provided the United States with an affidavit  
18 (attached as Exhibit A to this motion) that did not address any of the issues listed in  
19 Paragraph 5 above. In subsequent discussions with Ms. Levy, the United States learned  
20 that Ms. Levy is concerned that, without a more explicit Order from the Court, she cannot  
21 disclose any information about her pretrial interactions with Drago without violating her  
22 ethical obligations to maintain confidential communications with her former client.  
23

1           WHEREFORE, based on the foregoing, the government respectfully requests that  
2 the Court clarify its Order that the attorney-client privilege in 2:13-cr-00334-JCM-CWH is  
3 deemed waived as to those matters Drago has put at issue in his § 2255 motion, including  
4 Ms. Levy's communications with Drago regarding the government's June 2015 plea offer  
5 and his decision to accept or reject that offer, as well as Drago's admissions of guilt or  
6 expressed interest in pleading guilty to any of the crimes with which he was charged,  
7 whether by way of a plea agreement or an open plea to the indictment. The government  
8 respectfully requests that this Court order Ms. Levy to provide the government with a new  
9 affidavit or declaration addressing these issues, as well as any relevant materials and  
10 information, within 45 days.

11           Dated: March 19, 2020.

12   Respectfully submitted,

13   NICHOLAS A. TRUTANICH  
14   UNITED STATES ATTORNEY

15   

16   Sean Beaty  
17   Trial Attorney, Tax Division  
18   U.S. Department of Justice  
19   150 M St., NE, Rm. 1.811  
20   Washington, DC 20002  
21   (202) 616-2717  
22   Sean.P.Beaty@usdoj.gov  
23

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 19, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will serve a copy of this document on all counsel of record.

In addition, I caused to be mailed a copy of this document to the defendant at his last known address:

Anton Paul Drago, No. 48254-048  
FCI Terre Haute  
Federal Correctional Institution  
P.O. BOX 33  
Terre Haute, IN 47808

/s/ Sean Beaty  
Sean Beaty  
Trial Attorney, Tax Division

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTON PAUL DRAGO,

Defendant.

2:13-cr-00334-JCM-CWH

**ORDER**

Based upon the pending motion of the government, and good cause appearing,

**IT IS HEREBY ORDERED** that the attorney-client privilege in 2:13-cr-00334-JCM-CWH between Drago and Rebecca Levy shall be deemed waived for all purposes relating directly or indirectly to Drago's 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence by a person in federal custody. Ms. Levy shall, within 45 days of this order, provide the government with an affidavit or declaration concerning all information known by her related to the contentions raised, expressly or implicitly, in Drago's motion, including, but not limited to: (i) whether Ms. Levy communicated the government's June 2015 plea offer to Drago, (ii) whether Ms. Levy explained to Drago the benefits associated with accepting the government's offer or the associated risks of rejecting the plea offer, (iii) whether Ms. Levy recommended, formally or informally, that Drago accept or reject the government's plea offer, (iv) whether Drago ever admitted his guilt to Ms. Levy or communicated any interest in pleading guilty to one or more of the crimes charged, either by way of a plea agreement or an open plea to the indictment, (v) whether Drago instructed Ms. Levy to reject the government's plea offer, or whether Drago simply never

1 communicated his decision on the plea offer, (vi) whether Ms. Levy perceived that Drago  
2 had implicitly rejected the government's plea offer by failing to communicate his desire to  
3 accept the offer, and (vii) whether Ms. Levy's continued efforts to prepare for trial after the  
4 plea negotiations ended were, themselves, further indicia that Drago did not intend to  
5 plead guilty.

6 Consistent with the Court's March 6, 2020 Order, the government shall have an  
7 additional 45 days, after receiving Ms. Levy's new affidavit or declaration, to file its  
8 response to Drago's § 2255 motion.

9  
10 DATED March 23, 2020.

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13 UNITED STATES DISTRICT JUDGE  
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1 RENE L. VALLADARES  
Federal Public Defender  
2 Nevada State Bar No. 11479  
REBECCA A. LEVY  
3 Assistant Federal Public Defender  
411 E. Bonneville, Ste. 250  
4 Las Vegas, Nevada 89101  
(702) 388-6577/Phone  
5 (702) 388-6261/Fax  
Rebecca\_Levy@fd.org  
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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 ANTON PAUL DRAGO,  
13 Defendant.

Case No. 2:13-cr-00334-JCM-CWH

**AFFIDAVIT IN RESPONSE TO  
DEFENDANT'S MOTION  
PURSUANT TO 28 U.S.C. § 2255**

14  
15 **AFFIDAVIT OF COUNSEL**

16 STATE OF NEVADA )  
17 ) SS.  
18 COUNTY OF CLARK )

19 REBECCA LEVY, being first duly sworn, deposes and says:

- 20 1. I am an Assistant Federal Public Defender for the District of Nevada and  
21 represented Mr. Drago from March 10, 2014 through November 24, 2015.  
22  
23 2. I was not trial counsel for Mr. Drago.  
24 3. I reviewed Mr. Drago's Motion pursuant to 28 U.S.C. § 2255. ECF No. 211.  
25 4. I reviewed the government's Application for an Order Deeming the Attorney-  
26 Client Privilege Waived and the Court's Order. ECF Nos. 213, 215.

**Exhibit**

**A**



1           5.       The Order states that counsel shall provide the government with information  
2 "related to the contentions raised in Drago's motion" as specifically requested by the  
3 government in their Application. ECF No. 215.

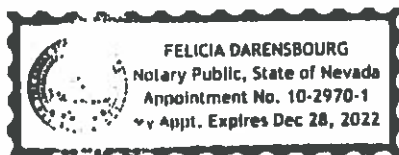
4           6.       Mr. Drago does not make any contentions against me or the Federal Public  
5 Defender's Office in his Motion.

6           7.       My name is mentioned in the Motion once and only as a response to the  
7 question regarding who represented Mr. Drago "[a]t the arraignment and plea." See ECF 213  
8 at 11.

9           8.       My name is not mentioned in the Affirmation in Support or the Memorandum  
10 of Law in Support. See ECF 213.

11           9.       Attorney Kevin O'Connell did not contact me to ask for substantive assistance  
12 in trial preparation.

13           10.      Attorney Kevin O'Connell did not contact me to inquire regarding plea  
14 negotiations.



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REBECCA LEVY  
Assistant Federal Public Defender

Subscribed and sworn to before me this 18 day of March, 2020.

Notary Public